

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Case No. 1:18-cv-96

BRIAN HOGAN, both on his own behalf and as representative of all unnamed class members who are similarly situated; BRIAN HOGAN, as parent and next friend of H.H., both her own behalf and as representative of all unnamed class members who are similarly situated,

Plaintiffs,

vs.

CHEROKEE COUNTY; CHEROKEE COUNTY DEPARTMENT OF SOCIAL SERVICES; SCOTT LINDSAY both in his individual capacity and official capacity as attorney for Cherokee County Department of Social Services; CINDY PALMER, in both her individual capacity and her official capacity as Director of Cherokee County Department of Social Services; DSS SUPERVISOR DOE #1, et al.,
Defendants.

EXHIBIT 2

EXCERPTS FROM MATHIEU V. GREENLEE HEARING

STATE OF NORTH CAROLINA)
)
COUNTY OF CHEROKEE COUNTY) IN THE GENERAL COURT OF JUSTICE
) DISTRICT COURT DIVISION
) FILE NO.: 18-CVD-0046

MICHAEL MATHIEU,

Plaintiff,

v.

SHALEES GREENLEE,

Defendant.

PROCEEDINGS

On Wednesday, February 28, 2018, commencing at 9:28 a.m., the above-captioned Proceedings were taken in the General Court of Justice, District Court Division, Cherokee County, North Carolina, before the Honorable Tessa Shelton Sellers, Judge Presiding, and was attended by Counsel as follows:

APPEARANCES:

ZEYLAND G. MCKINNEY, JR., ESQ.
McKinney Law Firm PA
23 Valley River Avenue
Murphy, North Carolina 28906
on behalf of the Plaintiff

DAVID A. WIJEWICKRAMA, ESQ.
MELISSA JACKSON, ESQ.
BRANDON CHRISTIAN, ESQ.
95 Depot Street
Waynesville, North Carolina 28786
on behalf of the Defendant

RON MOORE, ESQ.
P.O. Box 18402
Asheville, North Carolina 28804
on behalf of the Defendant

(Appearances continue)

1 BY THE COURT:

2 I agree with you. I can't make the
3 designation.

4 BY MR. MCKINNEY:

5 Right.

6 BY THE COURT:

7 I can make a recommendation to Judge Walker or
8 to Judge Coward who then make their
9 recommendation to the chief justice ---

10 BY MR. MCKINNEY:

11 Right.

12 BY THE COURT:

13 --- in order for that to happen.

14 BY MR. MCKINNEY:

15 Right. But my point is, Your Honor, with
16 respect to the custody agreement that was
17 entered into by the parties, if he's asking
18 for a declaratory judgment and he's asking for
19 a designation of that as an exceptional case,
20 I don't think we can hear anything with
21 respect to that today. And what I'm willing
22 to stipulate to for the purposes of this
23 custody action -- I'm willing to stipulate
24 that the custody agreement is not an order of
25 the Court, that it has no legal force or

1 effect as an order of the Court. But I think
2 the Court is going to have to take evidence --
3 I don't know if you have to take evidence, but
4 -- there seems to be some willingness to argue
5 that whatever status quo is created by this
6 agreement that the Court should consider that.
7 And if that's where they're coming from, then
8 I think that's something that Your Honor is
9 going to have to look at once you determine
10 the circumstances surrounding the execution of
11 that agreement. And my argument to the Court
12 on that point would be it really doesn't
13 matter. It doesn't matter whether there was -
14 - there was fraud in the execution of the
15 agreement. It doesn't matter whether there
16 was -- whether there was coercion. For
17 purposes my action, what I'm saying to the
18 Court is the status quo for a year has been
19 that this child has been in this location,
20 it's doing fine, and we don't want the child
21 drug around and upset until we can have a full
22 hearing on the merits. That's my position.
23 But I'm not going to get involved in whether
24 there was fraud, whether there was coercion.
25 There's no reason for me to do that. I don't

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1 All right, based on the preliminary matters
2 that are before the Court, the Court will
3 allow, since the parties have stipulated so,
4 to complete recordation. The Court will grant
5 the sequestration motion. The Court will also
6 grant the protective order and present.
7 However, the Court will hold that -- any
8 ruling on the motion for a 2.1 judge until the
9 end of the evidence today. And so who would
10 be the first witness to be called?

11 BY MR. MCKINNEY:

12 Michael Mathieu, Your Honor.

13 BY MR. DAVID MOORE:

14 Your Honor, there was a motion to quash filed
15 on behalf of the Department of Social
16 Services, and we are not a party to this
17 action. I ---

18 BY THE COURT:

19 I don't have a motion to quash.

20 BY MR. WIJEWICKRAMA:

21 We have not received any motions.

22 BY MR. DAVID MOORE:

23 Okay.

24 BY THE COURT:

25 I don't have it in the file, Mr. Moore.

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1 BY MS. JACKSON:

2 I've actually marked those for identification
3 purposes.

4 BY THE COURT:

5 Why don't we make that a collective exhibit?

6 BY MS. JACKSON:

7 If I may approach?

8 BY THE WITNESS:

9 Okay, here's both.

10 BY MR. RON MOORE:

11 Is it the one child, the child we're here on,
12 and the other three all together in the other
13 file?

14 BY THE WITNESS:

15 I think the thinner file is for Alana, and the
16 other is for the other three.

17 BY MR. RON MOORE:

18 Your Honor, we call Cindy Palmer.

19 BY THE COURT:

20 All right.

21 BY MR. DAVID MOORE:

22 Your Honor, I'm going to -- I don't know what
23 grounds I've got here. I'm not a party. But
24 she is the director of Department of Social
25 Services. She (inaudible) her official

1 capacity. I'm not sure how her testimony is
2 relevant to a private custody action here. I
3 understand Mr. Hughes' and the documents that
4 he was asked to produce. So it is my concern
5 at this point in time -- it is not -- it's
6 obvious that there is -- there is other
7 litigation either pending or going to happen
8 with regard to the CVAs. My concern is that
9 this is essentially turned into a discovery
10 deposition without the Department of Social
11 Services being able to defend itself or
12 represent itself. So that's my objection to
13 Ms. Palmer and her testimony at this time.

14 BY THE COURT:

15 Response?

16 BY MR. RON MOORE:

17 Judge, I don't believe he has any standing to
18 object. She's been subpoenaed as a witness.
19 He's not a party. She's not a party. She's
20 got a subpoena to bring some documents that
21 relate to what we just talked about, and we've
22 now found some documents are missing -- that
23 some files are missing. So we're entitled to
24 explore things like that. We also are asking
25 the Court to declare these unconstitutional or

1 illegal, the CVAs in this case, and I'm
2 entitled to explore what she knows about it,
3 what the policy is, what the procedure is, and
4 so I think she's a relevant witness.

5 BY MR. DAVID MOORE:

6 I just want to clarify the Department of
7 Social Services is not a party, correct

8 BY MR. RON MOORE:

9 You had a chance to be a party, but you chose
10 not to because you didn't -- you didn't go
11 file a petition in front of the Court. You
12 should have been a party. This -- yes, you're
13 not a party, that's correct.

14 BY MR. DAVID MOORE:

15 I'm not represented by counsel.

16 BY MR. RON MOORE:

17 Nor were the -- Ms. Greenlee or Mathieu or any
18 of the other people.

19 BY MR. DAVID MOORE:

20 I'm not able to cross-examine, correct?

21 BY MR. RON MOORE:

22 You're not a party.

23 BY MR. DAVID MOORE:

24 Okay.

25 BY MR. RON MOORE:

1 You have no standing to object to a witness.

2 BY THE COURT:

3 However, Mr. McKinney's client is a party. So
4 I'm going to ask Mr. McKinney. Just hang
5 tight, Mr. Moore. Do you have a response?

6 BY MR. MCKINNEY:

7 Your Honor, my client finds himself having to
8 pay my law firm to come into court to try to
9 retain custody of the child that he thought he
10 had custody of under a document that had been
11 presented to him by the Cherokee County
12 Department of Social Services, and I think the
13 Court ought to hear why my client is in this
14 situation and why Your Honor is having to do
15 this now under these circumstances.

16 BY THE COURT:

17 Can I see all the attorneys at the bench?

18 (BENCH CONFERENCE)

19 BY MR. DAVID MOORE:

20 Your Honor, am I allowed up there, or are you
21 just chatting with these parties? Because I
22 hear me being mentioned.

23 BY THE COURT:

24 I'm going to put what we said at the bench on
25 the record. The Court is going to allow Ms.

1 Palmer to be called for the limited purpose --
2 I indicated at the bench this is not a fishing
3 expedition. The Court has had the opportunity
4 to review the file. There has not been a
5 motion to quash the file. There has not been
6 a notice entered by an attorney on Ms.
7 Palmer's behalf. There is a valid subpoena
8 subpoenaing her to court. So I will allow her
9 to be called.

10 BY MR. DAVID MOORE:

11 That's fine, Your Honor. I just -- I do want
12 it noted for the record that we are not a
13 party to the action.

14 BY THE COURT:

15 Absolutely.

16 BY MR. DAVID MOORE:

17 And we do not have the -- whether I had filed
18 a motion to quash or not, I would not have the
19 opportunity to cross-examine or to examine any
20 witnesses or to ---

21 BY THE COURT:

22 However, you are not Ms. Palmer's personal
23 attorney.

24 BY MR. DAVID MOORE:

25 I understand I'm not her personal attorney.